



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R01-OAR-2011-0879; EPA-R01-OAR-2012-0076; FRL-9675.9]

#### **Approval and Promulgation of Air Quality Implementation Plans; Massachusetts and New Hampshire; Determination of Attainment of the One-hour and 1997 Eight-hour Ozone Standards for Eastern Massachusetts**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The EPA is making three separate and independent determinations. First, the EPA is determining that the Boston-Lawrence-Worcester (Eastern Massachusetts), MA-NH serious one-hour ozone nonattainment area met the applicable deadline of November 15, 2007, for attaining the one-hour National Ambient Air Quality Standard (NAAQS) for ozone. This final determination is based upon complete, quality-assured, certified ambient air monitoring data that show the area attained the level of the now revoked one-hour ozone NAAQS for the 2005-2007 monitoring period. Second, EPA is determining that the Boston-Lawrence-Worcester (Eastern Massachusetts) moderate 1997 eight-hour ozone nonattainment area attained the 1997 eight-hour NAAQS for ozone by its applicable attainment date (June 15, 2010), based upon complete, quality-assured, certified ambient air monitoring data for the 2007-2009 monitoring period. Third, EPA is determining that the Boston-Lawrence-Worcester (Eastern Massachusetts) moderate 1997 eight-hour ozone nonattainment area has attained the 1997 eight-hour NAAQS for ozone, based upon complete, quality-assured, certified ambient air monitoring data for 2008-2010 monitoring period, and continuing through 2011. Under the provisions of EPA's ozone

implementation rule, the requirements for this area to submit an attainment demonstration, a reasonable further progress plan, contingency measures, and other planning State Implementation Plans related to attainment of the 1997 eight-hour ozone NAAQS shall be suspended for so long as the area continues to attain the 1997 ozone NAAQS.

**DATES:** This rule is effective on **[Insert date 30 days from date of publication in the Federal Register]**.

**ADDRESSES:** EPA has established dockets for these actions under Docket Identification No. EPA-R01-OAR-2011-0879 and EPA-R01-OAR-2012-0076. All documents in the dockets are listed on the [www.regulations.gov](http://www.regulations.gov) web site. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square - Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Richard P. Burkhart, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office

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## **SUPPLEMENTARY INFORMATION:**

Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

Organization of this document. The following outline is provided to aid in locating information in this preamble.

- I. What Actions Is EPA Taking?
- II. What is the Background for these Actions?
- III. What Is the Effect of These Actions?
- IV. Final Actions
- V. Statutory and Executive Order Reviews

### **I. What Actions Is EPA Taking?**

EPA is making three separate and independent final determinations for the Boston-Lawrence-Worcester (Eastern Massachusetts), MA-NH serious one-hour ozone nonattainment area, and the Boston-Lawrence-Worcester (Eastern Massachusetts) moderate 1997 eight-hour ozone nonattainment area.

#### **A. Determination of Attainment for the One-Hour Ozone Standard**

First, EPA is determining that the Boston-Lawrence-Worcester (Eastern Massachusetts), MA-NH serious one-hour ozone nonattainment area has attained the one-hour ozone NAAQS, by the area's applicable attainment date of November 15, 2007 based upon complete, quality-assured and certified ambient air monitoring data for the 2005-2007 monitoring period. The Boston-Lawrence-Worcester, MA-NH one-hour ozone nonattainment area consists of Barnstable, Bristol, Dukes, Essex, Middlesex, Nantucket, Norfolk, Plymouth, Suffolk and Worcester Counties in Massachusetts; along with parts of Hillsborough and Rockingham Counties in southern New Hampshire. (See 40 CFR 81.322, and 81.330.)

B. Determinations of Attainment for the 1997 Eight-Hour Ozone Standard

Second, EPA is determining, under section 181(b)(2)(A) of the Clean Air Act (CAA), that the Boston-Lawrence-Worcester (Eastern Massachusetts) moderate 1997 eight-hour ozone nonattainment area attained the 1997 eight-hour ozone NAAQS by its applicable attainment date (June 15, 2010). The Eastern Massachusetts 1997 eight-hour ozone nonattainment area consists of Barnstable, Bristol, Dukes, Essex, Middlesex, Nantucket, Norfolk, Plymouth, Suffolk and Worcester Counties, in Massachusetts.

Finally, EPA is determining that the Boston-Lawrence-Worcester (Eastern Massachusetts) moderate 1997 eight-hour ozone nonattainment area has attained the 1997 eight-hour ozone NAAQS, based upon complete, quality-assured and certified ambient air monitoring data for the 2008-2010 and 2009-2011 monitoring periods.

## **II. What is the Background for These Actions?**

On December 14, 2011 (76 FR 77739), EPA published in the Federal Register a Notice of Proposed Rulemaking (NPR) proposing its determination under section 181(b)(2) that the Boston-Lawrence-Worcester (Eastern Massachusetts), MA-NH serious one-hour ozone nonattainment area attained the one-hour ozone NAAQS by November 15, 2007, the area's applicable attainment deadline. The rationale and bases for EPA's proposed determination are set forth in the December 14, 2011 NPR, and need not be restated here. EPA received no comments on the NPR.

On March 13, 2012 (77 FR 14712), EPA published in the Federal Register an NPR proposing its determinations that the Boston-Lawrence-Worcester (Eastern Massachusetts), MA moderate eight-hour ozone nonattainment area attained the 1997 eight-hour ozone NAAQS by June 15, 2010, the area's applicable attainment deadline, and that the area continues to attain the 1997 8-hour ozone NAAQS. The rationale and bases for EPA's proposed determinations are set forth in the March 13, 2012 NPR, and need not be restated here. EPA received no comments on the NPR.

## **III. What Is the Effect of These Actions?**

### **A. For the One-Hour Ozone Standard**

After revocation of the one-hour ozone standard, EPA must continue to provide a mechanism to give effect to the one-hour anti-backsliding requirements. See *SCAQMD v. EPA*, 472 F.3d 882,

at 903 (D.C. Cir. 2006). In keeping with this responsibility, EPA has determined that the Boston-Lawrence-Worcester, MA-NH serious one-hour ozone nonattainment area attained the one-hour ozone standard by the area's applicable attainment date of November 15, 2007. In this context, EPA has also determined that there are no additional obligations under the revoked one-hour standard, including those relating to one-hour ozone contingency measures, for the Boston-Lawrence-Worcester, MA-NH one-hour ozone nonattainment area.

B. For the Eight-Hour Ozone Standard

In accordance with CAA section 181(b)(2)(A), EPA is determining that the Boston-Lawrence-Worcester (Eastern Massachusetts) moderate 1997 eight-hour ozone nonattainment area attained the 1997 ozone NAAQS by its applicable attainment date of June 15, 2010. The effect of this determination of attainment by the area's attainment date is to discharge EPA's obligation under section 181(b)(2)(A), and to establish that, in accordance with that section, the area will not be reclassified for failure to attain by its applicable attainment date.

EPA is also determining that the Boston-Lawrence-Worcester (Eastern Massachusetts) moderate 1997 eight-hour ozone nonattainment area has attained the 1997 eight-hour ozone NAAQS, based upon the most recent complete, quality-assured and certified ambient air monitoring data, for the 2008-2010 and 2009-2011 monitoring periods. Under the provisions of EPA's ozone implementation rule (see 40 CFR Section 51.918), a determination that the area is attaining the 1997 eight-hour ozone standard suspends the requirements for the Boston-Lawrence-Worcester (Eastern Massachusetts) moderate 1997 eight-hour ozone nonattainment

area to submit an attainment demonstration, a reasonable further progress plan, section 172(c)(9) contingency measures, and any other planning State Implementation Plans (SIPs) related to attainment of the 1997 eight-hour ozone NAAQS for so long as the area continues to attain the 1997 ozone NAAQS.

EPA's determination that the area has attained the 1997 eight-hour ozone standard does not constitute a redesignation to attainment for that standard under CAA section 107(d)(3), because EPA has not yet approved a maintenance plan for the area, as required under section 175A of the CAA, nor determined that the area has met the other requirements for redesignation. Thus, the classification and designation status of the area remains moderate nonattainment for the 1997 eight-hour ozone NAAQS until such time as EPA determines that it meets the CAA requirements for redesignation to attainment. If EPA subsequently determines, after notice-and-comment rulemaking in the Federal Register, that the Boston-Lawrence-Worcester (Eastern Massachusetts) moderate 1997 eight-hour ozone area's basis for the suspension of these requirements no longer exists, then the area would thereafter have to address the pertinent requirements.

#### **IV. Final Actions**

EPA is making three separate and independent determinations. First, EPA is determining that the Boston-Lawrence-Worcester, MA-NH one-hour ozone nonattainment area met its applicable one-hour ozone attainment date of November 15, 2007, based on 2005-2007 complete, certified, quality-assured ozone monitoring data. Second, EPA is determining, pursuant to CAA section

181(b)(2)(A), that the Boston-Lawrence-Worcester (Eastern Massachusetts) moderate 1997 eight-hour ozone nonattainment area met the applicable eight-hour ozone attainment date of June 15, 2010, based on 2007-2009 complete, certified, quality-assured ozone monitoring data. Third, EPA is determining that the Boston-Lawrence-Worcester (Eastern Massachusetts) moderate 1997 eight-hour ozone nonattainment area has attained the applicable eight-hour ozone standard based on complete, certified, quality-assured ozone monitoring data for 2008-2010 and 2009-2011.

#### **IV. Statutory and Executive Order Reviews**

These actions make determinations of attainment based on air quality, result in the suspension of certain Federal requirements, and/or would not impose additional requirements beyond those imposed by state law. For that reason, these actions:

- are not "significant regulatory actions" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);



- are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, these actions do not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing these actions and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after

it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [**FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register**]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 14, 2012

Ira W. Leighton  
Acting Regional Administrator,  
EPA New England.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

**PART 52 -- [AMENDED]**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 et seq.

**Subpart W -- Massachusetts**

2. Section 52.1129 is amended by adding paragraphs (f) and (g) to read as follows:

**§ 52.1129 Control strategy: Ozone.**

\* \* \* \* \*

(f) Determination of Attainment for the One-Hour Ozone Standard. Effective **[INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, EPA is determining that the Boston-Lawrence-Worcester, MA-NH one-hour ozone nonattainment area met the one-hour ozone standard, by the area's applicable attainment date of November 15, 2007, based on 2005-2007 complete, certified, quality-assured ozone monitoring data at all monitoring sites in the area.

(g) Determination of Attainment. (1) Determination of Attainment by Attainment Date and;  
(2) Determination of Attainment. Effective **[INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER]**

(i) Determination of Attainment by the Area's Attainment Date. EPA is determining that the Boston-Lawrence-Worcester, MA eight-hour ozone nonattainment area met the applicable June 15, 2010 attainment deadline for the 1997 eight-hour ozone standard.

(ii) EPA is determining that the Boston-Lawrence-Worcester, MA eight-hour ozone nonattainment area has attained the 1997 eight-hour ozone standard. Under the provisions of EPA's ozone implementation rule (see 40 CFR 51.918), this determination suspends the reasonable further progress and attainment demonstration requirements of section 182(b)(1) and related requirements of section 172(c)(9) of the Clean Air Act for as long as the area continues to attain the 1997 eight-hour ozone standard. If EPA determines, after notice-and comment rulemaking, that the Boston-Lawrence-Worcester, MA area no longer meets the 1997 ozone NAAQS, this determination shall be withdrawn.

#### **Subpart EE -- New Hampshire**

3. Section 52.1534 is amended by adding paragraph (f) to read as follows:

##### **§ 52.1534 Control strategy: Ozone.**

\* \* \* \* \*

(f) Determination of Attainment for the One-Hour Ozone Standard. Effective [**INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER**], EPA is determining that the Boston-Lawrence-Worcester, MA-NH one-hour ozone nonattainment area met the one-hour ozone standard, by the area's applicable attainment date of November 15, 2007, based on 2005-2007 complete, certified, quality-assured ozone monitoring data at all monitoring sites in the area.

